

ARTICLE 72-05

ELECTRONIC FILINGS AND SIGNATURES

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CHAPTER 72-05-01 FACSIMILE FILINGS

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72-05-01-01. Applicability. These rules are applicable and available to any state agency as defined in North Dakota Century Code section 44-08-04.2 charged by law with the duty of receiving signed, subscribed, or verified documents. Any such document may be submitted by fax as permitted by the state agency and this chapter.

History: Effective October 1, 1998.

General Authority: NDCC 1-08-12

Law Implemented: NDCC 1-08-12

72-05-01-02. Definitions.

1. "Facsimile filer" or "filer" means a person who transmits or causes to be transmitted a facsimile filing to a state agency.
2. "Facsimile filing" or "filing by fax" means the facsimile transmission of a document to a state agency that accepts such documents.
3. "Facsimile transmission" means a completed transmission of a document by a system that encodes a document into electrical signals, transmits these electrical signals over a telephone line, and

reconstructs the signals to print a duplicate of the original document at the receiving end.

4. "Fax" is an abbreviation for "facsimile", and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.
5. "Transmission cover sheet" means the transmission document which must include the following information from the facsimile filer: the filer's name, address, and telephone number; the facsimile telephone number of the sending machine; the number of pages sent; the transmission time and date; the identification of the documents transmitted; and any applicable filing deadline and whether the fax should be directed to any particular person at the state agency. If a filing fee is required for the document to be filed, the transmission cover sheet must also contain a valid credit card account number to which the filing fee must be charged, signature of the cardholder authorizing the charging of the fee, and the expiration date of the credit card. The state agency may require additional information to be included in the cover sheet.
6. "Transmission record" means the required document printed or created by the sending facsimile machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time and date, and an indication of any errors in transmission.

History: Effective October 1, 1998.

General Authority: NDCC 1-08-12

Law Implemented: NDCC 1-08-12

72-05-01-03. General requirements. The document used for transmitting a fax other than a transmission cover sheet must be an original legible document. Any document that exceeds eight and one-half inches [21.59 centimeters] by eleven inches [35.56 centimeters] must be reduced in size to not more than eight and one-half inches [21.59 centimeters] by eleven inches [35.56 centimeters] before it is transmitted. In order for a document to be eligible for filing, it must be received by the state agency in a legible, complete form. If applicable law requires the document to be verified, the notary jurat or equivalent language must be completed and included on the document transmitted by fax. Any notary jurat must be accompanied by a discernible seal or stamp. A state agency accepting a fax filing may require a facsimile filer to file an original of any document that has been filed by fax or to retain the original for any period of time up to the time specified for the particular type of document in the records retention schedule of the state agency.

History: Effective October 1, 1998.

General Authority: NDCC 1-08-12

Law Implemented: NDCC 1-08-12

72-05-01-04. Mandatory transmission cover sheet. A facsimile filing must be accompanied by a completed transmission cover sheet. The cover sheet must

be the first page transmitted. The state agency shall ensure that any credit card information on the transmission cover sheet not be publicly disclosed.

History: Effective October 1, 1998.

General Authority: NDCC 1-08-12, 44-04-18.9

Law Implemented: NDCC 1-08-12

72-05-01-05. Notation of fax filing. Each document transmitted by fax for direct filing with a state agency must contain the phrase "by fax" or "by facsimile" immediately below the title of the document.

History: Effective October 1, 1998.

General Authority: NDCC 1-08-12

Law Implemented: NDCC 1-08-12

72-05-01-06. Presumption of filing. A facsimile filer shall cause the transmitting facsimile machine to print a transmission record of each filing by fax. If the facsimile filing is not filed with the state agency because of an error in the transmission of the document to the state agency which was unknown to the facsimile filer or a failure to process the facsimile filing when received by the state agency, the facsimile filer may request that the state agency consider the document to be filed on the date transmitted. The request to the state agency must be accompanied by a sworn statement and a proof of transmission in substantially the following form:

At the time of transmission I was at least 18 years of age. On (date) _____ at (time) _____ I transmitted to the (state agency) _____ the following document (name) _____ by facsimile machine, pursuant to North Dakota Administrative Code Chapter 72-05-01. The state agency's fax telephone number that I used was (fax telephone number) _____. The facsimile machine I used complied with the administrative rules and no error was reported by the machine. Pursuant to North Dakota Administrative Code Section 72-05-01-07, I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

I declare under the pains and penalties of perjury under the laws of the State of North Dakota that the foregoing statement is true and correct.

Subscribed and sworn to before me this _____ day of _____.

Notary Public

History: Effective October 1, 1998.

General Authority: NDCC 1-08-12

Law Implemented: NDCC 1-08-12

72-05-01-07. Payment of filing fee by credit or debit card.

1. A credit or debit card account acceptable to the state agency may be used to pay for filing fees on facsimile filings made directly to a state agency. The transmission cover sheet for these filings must include the credit or debit card account number to which the fee is be charged, the signature of the cardholder authorizing the charging of the fees, and the expiration date of the credit or debit card.
2. Rejection of charge. If a charge is rejected by the issuing company, the state agency may notify the facsimile filer that the filing is rejected because of the rejected charge. This provision does not prevent a state agency from seeking authorization for the charge before the filing and rejecting the filing if the charge is not approved by the issuing company.
3. Amount of charge. The amount of credit or debit card charge must be the applicable statutory fee, tax, or other authorized charge. An additional fee may not be charged to the facsimile filer in order to accept payment by credit card.

History: Effective October 1, 1998.

General Authority: NDCC 1-08-12, 54-06-08.2

Law Implemented: NDCC 1-08-12

72-05-01-08. Automated clearinghouse payments. A facsimile filer may pay for filing fees by establishing an automated clearinghouse debit or credit transaction. The facsimile filer shall contact the state agency to establish the payment procedure prior to the initial automated clearinghouse transaction. The facsimile filer must sign an authorization to be filed with the state agency before an automated clearinghouse debit transaction may be completed. The facsimile filer must contact the state agency for automated clearinghouse credit transfer instructions to the Bank of North Dakota.

History: Effective October 1, 1998.

General Authority: NDCC 1-08-12

Law Implemented: NDCC 1-08-12

72-05-01-09. Signatures.

1. **Possession of original document.** A facsimile filer who files a signed document pursuant to these rules represents that the original signed document is in the filer's possession or control and available for inspection by or delivery to the state agency at any reasonable

time and place within the number of years of the filing specified by the agency upon demand by the agency.

2. **Validity of signature.** A signature on a document accepted for filing by the state agency and filed by facsimile in accordance with these rules has the same validity and consequence as the manually signed signature.

History: Effective October 1, 1998.

General Authority: NDCC 1-08-12

Law Implemented: NDCC 1-08-12

72-05-01-10. Availability of state agency fax. A state agency agreeing to accept fax filings shall make its fax machine generally available for receipt of documents during normal business hours on normal business days. This provision does not prevent the state agency from utilizing the fax machine to transmit documents or providing for normal repair and maintenance of the fax machine during these hours.

History: Effective October 1, 1998.

General Authority: NDCC 1-08-12

Law Implemented: NDCC 1-08-12

72-05-01-11. Records of fax filings. A state agency may maintain a manual or other log to record incoming fax filings. The log or record may contain a description of the received document and the state agency staff person to whom the document was assigned for filing.

History: Effective October 1, 1998.

General Authority: NDCC 1-08-12

Law Implemented: NDCC 1-08-12